

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RION T. MACCONNELL,	:	
Plaintiff,	:	Case No. 3:13cv00034
vs.	:	District Judge Timothy S. Black
	:	Chief Magistrate Judge Sharon L. Ovington
SHERIFF PHIL PLUMMER, <i>et al.</i> ,	:	
Defendants.	:	

DECISION AND ENTRY

This matter is before the Court upon Plaintiff's Proposed Amended Complaint (Doc. #9), his Notice of Substitution for John Does to the Court and All Parties (Doc. #13), and the record as a whole.

Service of summons and Plaintiff's Complaint has not yet occurred on the named Defendants. Plaintiff may therefore amend his Complaint "once as a matter of course" Fed. R. Civ. P. 15(a)(1). His Proposed Amended Complaint is therefore accepted as filed and is considered his First Amended Complaint. (Doc. #9).

Plaintiff's Notice of Substitution seeks to substitute Montgomery County, Ohio in place of a John Doe Defendant. "Substituting a named defendant for a 'John Doe' defendant is considered a change in parties, not a mere substitution of parties." *Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir. 1996). Plaintiff must therefore file a Motion to Amend his Complaint under Fed. R. Civ. P. 15, *see Cox*, 75 F.3d at 240, along with a copy of his

Proposed Second Amended Complaint. Without such a Motion and a Proposed Second Amended Complaint, Plaintiff's Notice of Substitution (Doc. #13) fails to accomplish the substitution he seeks.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Proposed Amended Complaint (Doc. #9) is accepted as filed and constitutes his First Amended Complaint;
2. **On or before May 6, 2013**, Plaintiff may file – if he so desires – a Motion to Amend his Complaint along with a Proposed Second Amended Complaint;
3. The Clerk of Court shall provide Plaintiff with the forms necessary to effect service of summons and service of Plaintiff's First Amended Complaint (Doc. #9). **In order to accomplish service, Plaintiff must complete and return the forms to the Clerk's Office;** and
4. Because Plaintiff is proceeding *in forma pauperis*, the United States Marshal is directed to serve summons and a copy of the First Amended Complaint (Doc. #9), and a copy of this Order upon the named Defendants based upon the information Plaintiff provides in the forms he completes. All costs of service shall be advanced by the United States.

April 11, 2013

s/Sharon L. Ovington
Sharon L. Ovington
Chief United States Magistrate Judge